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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(s): L. Janesky

SERIAL NO.: 10/785,303 ART UNIT: 3749

FILING DATE: 2/24/04 EXAMINER: Joyce, H.

TITLE: CRAWLSPACE FOUNDATION VENT COVERS

ATTORNEY

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APPELLANTS' BRIEF

This is an appeal from the final rejection of the claims in the above-identified application. A Notice of Appeal was mailed on April 3, 2006.

**I. REAL PARTY IN INTEREST**

The real party in interest in this Appeal is Lawrence M. Janesky.

## **II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

## **III. STATUS OF CLAIMS**

Claims 1-8 are pending in the application. Claims 6-8 are withdrawn from consideration.

Claims 1-5 have been finally rejected.

The claims on appeal are 1-5.

## **IV. STATUS OF AMENDMENTS**

There were no amendments to the claims subsequent to the final rejection of July 7, 2005.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Claim 1 recites air vent covers (10) for attachment to crawlspace walls, over air vent openings, to enclose the air vent openings and seal them against the entry of air and humidity from the atmosphere into the crawlspace (Page 4, L. 28 - Page 5, L. 5; See Fig. 1). The air vent covers comprising rectangular panels (Page 6, L. 22 - Page 7, L. 1; Fig. 3, Ref. No. 10) molded from durable plastic composition (Page 7, L. 3-4) with a flat outer surface surrounded by a recessed peripheral border (See Fig. 4) provided with a plurality of holes (16) for

receiving attachment means for fastening the cover to a crawlspace wall (Page 7, L. 3-6, L. 13-16 and L. 17-29; Fig. 3). The rectangular panels also being molded with a recessed inner surface (13) surrounded by a projecting peripheral border, the recessed inner surface (13) being provided with projecting reinforcing ribs (14, 15) which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall (Page 7, L. 3-13).

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Are claims 1-5 unpatentable under 35 U.S.C. 103 as being obvious over Allabaugh, U.S. Patent No. 2,821,895, in view of Crute, Jr., U.S. Patent No. 2,834,278 ("Crute"), and Naka, U.S. Patent No. 3,975,870?

#### **VII. ARGUMENT**

##### **1. Claim 1**

Claim 1 recites air vent covers for attachment to crawlspace walls, over air vent openings, to enclose said air vent openings and seal them against the entry of air and humidity from the atmosphere into the crawlspace.

It is submitted that Allabaugh, Crute and Naka have been combined improperly under 35 U.S.C. 103. References may be combined under 35 U.S.C. 103 only if the references are

analogous art. In this case Naka is not analogous art. A reference is analogous art if:

- 1) The reference is in the same field of endeavor as the applicant's, or
- 2) The reference is reasonably pertinent to the particular problem with which the applicant was concerned.

Naka is not in the same field as the Applicant's invention (i.e. crawlspace foundation vent covers). Naka is directed to a floor hatch and not to crawlspace foundation vent covers. The Examiner argues that "Naka is in the same field of Applicant's endeavor which is covering an opening in a building. However, there are many types of openings in buildings such as, for example, entrances for persons/objects (e.g. doors), access openings for air and light (e.g. windows and skylights), access openings for electrical wiring and the like. The covers for these different openings are not all the same. The different covers for the different openings have different principal characteristics, not because of the structure they are in, but because of the functional characteristics and operation of each type of opening and its cover.

For example, windows and doors can be opened or closed to allow entrance into or exit from the building (e.g. for air, light, persons, etc.). In addition, windows and doors are not load bearing members of a building. Skylights for example, may open and close to allow air and light entrance/exit to a building structure but must also be able to support any load that would

be applied to, for example, the surround area of the roof or ceiling to prevent, for example, breakage of the glass.

Access openings located on a floor, such as the floor hatch in Naka, have a completely different function and are not in the same field as, for example windows, doors and skylights. The floor hatch has to support the required floor loads for safe operation of the hatch (to prevent, for example, an occupant of the building from falling through the hatch). Floor hatches, such as the floor hatch of Naka, do not open and close to allow light or air into or out of a building structure.

The air vent cover as claimed by Applicant is for attachment to crawlspace foundation walls, over air vent openings. An air vent cover is again a different type of cover in a building opening than a floor hatch and therefore not in the same field as the floor hatch. An air vent cover, for example, serves to prevent entrance of or allow entrance of air into an area of a building. The air vent cover is not a load bearing member of the structure and does not have to support the loads of the surrounding building structure. Thus, the air vent cover is not in the same field as the floor cover of Naka.

Nor is Naka reasonably pertinent to the particular problem with which the Applicant was concerned (i.e. closing and sealing air ventilation openings in walls to prevent the entry of air and humidity from the atmosphere into a crawlspace). The floor hatch of Naka serves as an access through a building floor (Col. 1, L. 1-7) and functions as part of the floor. Thus, the floor hatch of Naka must necessarily support floor loads. In contrast, the closure for air ventilation openings in walls do not have to support (i.e. are not subjected to) the wall loads.

Naka is not in the same field of endeavor nor is it reasonably pertinent to the particular problem to which the Applicant was concerned. Therefore, Naka is not analogous art and cannot be properly combined with Allabaugh and Crute.

Furthermore, it would not have been obvious for a person skilled in the art to combine Naka with Allabaugh and Crute. Naka is concerned with a floor hatch while Allabaugh and Crute are concerned with a completely different type of closure (i.e. foundation ventilation closures). The closures of Naka, Allabaugh and Crute operate in different ways to close different types of openings. The different types of closures are subject to different loads in that the floor hatch (10) of Naka is subjected to floor loads (i.e. must carry the same loads as applied to rest of floor) that are significantly greater than the loads seen by the wall ventilation closures of Allabaugh and Crute (i.e. 10 psf for the ventilation closures vs. at least 100 psf for the floor closure). In addition, the floor hatch in Naka is not permitted by building codes to deflect under load as evidenced by the reinforcing ribs (54) (Col. 4, L. 23-33) while the vent closure of Crute may flex (Col. 3, L. 1-2). There is nothing in Allabaugh, Crute and Naka to motivate one skilled in the art to combine these references due to the large differences in the purpose and function of their respective closures.

Moreover, the combination of Allabaugh, Crute and Naka fails to disclose or suggest all of the features recited in claim 1. Claim 1 calls for a recessed peripheral border with a plurality of holes for receiving attachment means for fastening the cover to the wall. Neither Allabaugh, Crute nor Naka, individually or in combination, disclose or suggest this.

Allabaugh discloses a closure having a plate (7) and marginal edges curved inwardly at (8) and laterally at (9), the plate being of a size to closely fit within the opening with the marginal edges of the plate contacting with the edges or walls of the opening (Col. 1, L. 56-60; Figs. 2 and 3). In Allabaugh, the plate (7) is held in position on the wire mesh material or screen (6) by means of hooks (10) (Col. 1, L. 62 - Col. 2, L. 4; Figs. 2 and 3). The plate (7) is provided with openings (14) arranged adjacent to the corners of the plate (7), through which the shanks of the hooks (10) extend (Col. 2, L. 18-21).

The marginal edges (8, 9) of the plate (7) in Allabaugh do not have holes for receiving the hooks (10) as the Examiner suggests (See Figs. 1-3). The Examiner argues (on the continuation sheet for item 11 of the Advisory Action dated December 23, 2005) that the "recessed peripheral border with a plurality of holes" is disclosed in Allabaugh and "starts inside adjacent the openings (14) to the lateral edge (9)". However, contrary to the Examiner's argument, the openings (14) for the hooks (10) are located on the flat inner portion of the plate (7) and not a "recessed peripheral border" of the plate (7) as called for in claim 1 (Col. 2, L. 18-21 and Figs. 1-3). As can be clearly seen in Figures 1-3 of Allabaugh, there is only one planar surface surrounding the holes (14) so that the holes (14) are away from the marginal edges (8, 9). The surface surrounding the holes (14) is not part of a recessed peripheral border and cannot be considered part of the marginal edges (8, 9). Nowhere does Allabaugh disclose or suggest a recessed peripheral border with a plurality of holes for receiving attachment means for fastening the cover to the wall as called for in claim 1.

Crute also fails to disclose or suggest a recessed peripheral border with a plurality of holes for receiving attachment means for fastening the cover to the wall. Crute discloses a vent closure having a flat closing wall portion (20) terminating at a peripheral edge (22) and a single central hole defined by sleeve (32), for mounting bolt (34) (Col. 2, L. 4-7 and L. 20-29; Fig. 2). The edge (22) or flange of Crute is not disclosed as having any holes whatsoever (See Figs. 1-2). Again, nowhere does Crute disclose or suggest a recessed peripheral border with a plurality of holes for receiving attachment means for fastening the cover to the wall as called for in claim 1.

Likewise, Naka also fails to disclose or suggest a recessed peripheral border with a plurality of holes for receiving attachment means for fastening the cover to the wall. Naka discloses a floor hatch (See Abstract). The holes for the fasteners of Naka are not located on a "recessed peripheral border" of the cover but rather, they are located on the peripheral framework elements (112) of the floor cover (Fig. 5). The holes of Naka are holes used for attaching the peripheral framework elements (112) to internal corner members (130) of the cover assembly (Col. 5, L. 21-26) and are not holes for attachment means for fastening the cover to the crawlspace wall.

Neither Allabaugh, Crute nor Naka disclose or suggest the features called for in claim 1, therefore their combination cannot as well. Thus, claim 1 is patentable over the prior art and the rejection should be reversed.

2. Claim 4

Claim 4 depends from claim 1 and is patentable at least for the reasons described above with respect to claim 1. Furthermore, claim 4 recites said reinforcing ribs project outwardly from the recessed surface of said cover a distance equal to the extent of the recess. The combination of Allabaugh, Crute and Naka fails to disclose or suggest this feature.

As described above, Naka discloses reinforcing ribs but does not have a recessed surface. Allabaugh and Crute do not disclose or suggest that the vent covers have reinforcing ribs as claimed in claim 4. While Allabaugh discloses the marginal edges (8, 9) of the plate (7), it is submitted that the references do not provide any motivation for a person skilled in the art to modify the references to achieve what is claimed by Applicant. In addition to Naka being non-analogous art as described above, there is absolutely no disclosure or suggestion in any of the cited references that reinforcing ribs project outwardly from the recessed surface of said cover a distance equal to the extent of the recess. Therefore, claim 4 is patentable over the prior art and the rejection should be reversed.

### 3. Claim 5

Claim 5 ultimately depends from claim 1 and is patentable at least for the reasons described above with respect to claim 1. Moreover, claim 5 recites a pair of reinforcing ribs spaced from each other by a distance of about 3". The combination of Allabaugh, Crute and Naka fails to disclose or suggest this feature.

As described above, Allabaugh and Crute do not disclose or suggest reinforcing ribs. Furthermore, there is simply no



disclosure or suggestion in Naka pertaining to the spacing of the ribs (54). Thus, the combination of Allabaugh, Crute and Naka cannot disclose or suggest a pair of reinforcing ribs spaced from each other by a distance of about 3". Therefore, claim 5 is patentable over the prior art and the rejection should be reversed.

A check in the amount of \$250 is enclosed herewith for the appeal brief fee. The Commissioner is hereby authorized to charge payment for any additional fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

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Janik Marcovici

Reg. No.: 42,841

Date

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6/30/06

Perman & Green, LLP  
425 Post Road  
Fairfield, CT 06824  
(203) 259-1800  
Customer No.: 2512



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## VIII. CLAIM APPENDIX

The texts of the claims involved in the appeal are:

1. Air vent covers for attachment to crawlspace walls, over air vent openings, to enclose said air vent openings and seal them against the entry of air and humidity from the atmosphere into the crawlspace, said air vent covers comprising rectangular panels molded from durable plastic composition with a flat outer surface surrounded by a recessed peripheral border provided with a plurality of holes for receiving attachment means for fastening the cover to a crawlspace wall, said rectangular panels also being molded with a recessed inner surface surrounded by a projecting peripheral border, said recessed inner surface being provided with projecting reinforcing ribs which extend across the width of the panels to reinforce the panels against warpage when they are fastened to the crawlspace wall.
2. Air vent covers according to claim 1 further comprising a sealing means bonded to the projecting peripheral border surrounding the recessed inner surface for providing a continuous seal between the border of the vent cover and the surface of a crawlspace wall to which the vent cover is fastened.
3. Air vent covers according to claim 2 in which the sealing means comprises a narrow plastic foam insulating tape adhered to the peripheral border of the vent cover.

4. Air vent covers according to claim 1 in which said reinforcing ribs project outwardly from the recessed surface of said cover a distance equal to the extent of the recess.

5. Air vent cover according to claim 4 comprising a pair of reinforcing ribs spaced from each other by a distance of about 3".

6. Air vent cover for insertion into an air vent opening in a crawlspace wall to plug said air vent opening and seal it against the entry of air and humidity from the atmosphere into the crawlspace, each said air vent cover comprising a tubular rectangular element molded from durable plastic composition with a flat air-impervious outer face surface, each said tubular rectangular element having the same height and width as the air vent opening and sufficient depth to enable it to be frictionally retained within the air vent opening in place of a removed air vent.

7. Air vent cover according to claim 6 further comprising a sealing means for providing a continuous seal between the border of the vent cover and the surface of a crawlspace wall into which the tubular rectangular element is inserted.

8. Air vent covers according to claim 7 in which the sealing means comprises a bead of adhesive caulk composition.

## **IX. EVIDENCE APPENDIX**

Not applicable.

**X. RELATED PROCEEDINGS APPENDIX**

Not applicable.